



Sen. Toi W. Hutchinson

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LRB098 06898 JLS 43333 a

1 AMENDMENT TO SENATE BILL 1190

2 AMENDMENT NO. _____. Amend Senate Bill 1190 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Family Care Provider Act.

6 Section 5. Purpose. It is the purpose of this Act that all
7 employers required to comply with the Family and Medical Leave
8 Act of 1993, 29 U.S.C. 2601, et seq., shall include
9 grandparents and grandchildren as "eligible employees" for
10 leave for the birth or adoption of a grandchild in order for
11 the grandparent to care for that grandchild; for the placement
12 of a grandchild with the grandparent for adoption or foster
13 care; for the grandparent to care for the grandchild if that
14 grandchild has a serious health condition; or for the
15 grandchild to care for the grandparent if the grandparent has a
16 serious health condition.

1 Section 10. Definitions. For the purposes of this Act:

2 "Department" means the Department of Labor.

3 "Director" means the Director of the Department of Labor.

4 "Eligible employee" means an employee who has been employed
5 for (i) at least 12 months by the employer with respect to whom
6 leave is requested under this Act and (ii) has at least 1,250
7 hours of service with that employer during the previous
8 12-month period.

9 "Eligible employee" does not include any employee of an
10 employer who is employed at a worksite at which the employer
11 employs fewer than 50 employees if the total number of
12 employees employed by that employer within 75 miles of that
13 worksite is less than 50.

14 "Employee benefits" means all benefits, other than salary
15 and wages, provided or made available to employees by an
16 employer and includes group life insurance, health insurance,
17 disability insurance, and pensions, regardless of whether
18 benefits are provided by a policy or practice of an employer.

19 "Employer" has the meaning ascribed to that term in the
20 Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et seq.

21 "Grandparent" means a biological, adopted, or step
22 grandparent of an employee or a grandparent who is physically
23 residing with the employee.

24 "Grandchild" means a biological, adopted, or step
25 grandchild of an employee or a grandchild who is physically

1 residing with the employee.

2 Section 15. Scope. All employers required to comply with
3 the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 et
4 seq., are required to comply with this Act.

5 Section 20. Family leave requirement.

6 (a) Subject to the conditions set forth in this Section, an
7 eligible employee is entitled to receive and each employer, as
8 defined in Section 10 of this Act, must provide up to 12 weeks
9 of unpaid family medical leave to an employee during any
10 12-month period for one or more of the following:

11 (1) the birth or adoption of a grandchild in order for
12 the employee to care for the grandchild;

13 (2) the placement of a grandchild with the employee for
14 adoption or foster care or the placement of a grandparent
15 or grandchild to physically reside in the employee's home;

16 (3) the care for a grandchild if the grandchild has a
17 serious health condition; or

18 (4) the care for a grandparent if the grandparent has a
19 serious health condition.

20 (b) In any case in which the necessity for leave under this
21 Section is foreseeable, the employee shall provide the employer
22 with notice of the employee's intention to take leave under
23 this Section at least 30 days before the leave is to begin. If
24 the date of the birth, adoption, or placement requires leave to

1 begin in fewer than 30 days or in the case of sudden medical
2 emergency or health condition, the employee shall provide as
3 much notice as is practicable. When able, the employee shall
4 consult with the employer to schedule the leave so as to not
5 unduly disrupt the operations of the employer.

6 (c) An employee shall not take leave as provided under this
7 Act unless he or she has exhausted all accrued vacation leave,
8 personal leave, compensatory leave, and any other leave that
9 may be granted to the employee, except sick leave and
10 disability leave.

11 Section 25. Certification.

12 (a) In general. An employer may require that a request for
13 leave be supported by a certification issued by the health care
14 provider of the eligible employee or of the grandparent or
15 grandchild in the case of leave taken under such subsection
16 (a) (3) or (a) (4) of Section 20, as appropriate. The employee
17 shall provide, in a timely manner, a copy of the certification
18 to the employer.

19 (b) Sufficient certification. Certification provided under
20 subsection (a) of this Section shall be sufficient if it
21 states:

22 (1) the date on which the serious health condition
23 commenced;

24 (2) the probable duration of the condition;

25 (3) the appropriate medical facts within the knowledge

1 of the health care provider regarding the condition;

2 (4) for purposes of leave, a statement that the
3 eligible employee is needed to care for the grandparent or
4 grandchild and an estimate of the amount of time that the
5 employee is needed to care for the grandchild or
6 grandparent;

7 (5) in the case of certification for intermittent leave
8 or leave on a reduced leave schedule for planned medical
9 treatment, the dates on which the treatment is expected to
10 be given and the duration of the treatment;

11 (6) in the case of certification for intermittent leave
12 or leave on a reduced leave schedule, a statement of the
13 medical necessity for the intermittent leave or leave on a
14 reduced leave schedule and the expected duration of the
15 intermittent leave or reduced leave schedule; and

16 (7) in the case of certification for intermittent leave
17 or leave on a reduced leave schedule, a statement that the
18 employee's intermittent leave or leave on a reduced leave
19 schedule is necessary for the care of a grandparent or
20 grandchild, who has a serious health condition, or will
21 assist in their recovery and the expected duration and
22 schedule of the intermittent leave or reduced leave
23 schedule.

24 (c) Second opinion.

25 (1) In general. In any case in which the employer has
26 reason to doubt the validity of the certification for leave

1 provided under subsection (a) of this Section, the employer
2 may require, at the expense of the employer, that the
3 eligible employee obtain the opinion of a second health
4 care provider designated or approved by the employer
5 concerning any information certified as provided in
6 subsection (b) of this Section for the leave.

7 (2) Limitation. A health care provider designated or
8 approved under paragraph (1) shall not be employed on a
9 regular basis by the employer.

10 (d) Resolution of conflicting opinions.

11 (1) In general. In any case in which the second opinion
12 described in subsection (c) of this Section differs from
13 the opinion in the original certification provided under
14 subsection (a) of this Section, the employer may require,
15 at the expense of the employer, that the employee obtain
16 the opinion of a third health care provider designated or
17 approved jointly by the employer and the employee
18 concerning the information certified as provided in
19 subsection (b) of this Section.

20 (2) Finality. The opinion of the third health care
21 provider concerning the information certified as provided
22 in subsection (b) of this Section shall be considered to be
23 final and shall be binding on the employer and the
24 employee.

25 (e) Subsequent recertification. The employer may require
26 that the eligible employee obtain subsequent recertifications

1 on a reasonable basis.

2 Section 30. Employee benefits protection.

3 (a) Any employee who exercises the right to leave under
4 this Act shall be entitled upon expiration of the leave to be
5 restored by the employer to the position held by the employee
6 when the leave commenced or to a position with equivalent
7 seniority status, employee benefits, pay, and other terms and
8 conditions of employment. This Section does not apply if the
9 employer proves that the employee was not restored as provided
10 in this Section because of conditions unrelated to the
11 employee's exercise of rights under this Act.

12 (b) During any leave taken under this Act, the employer
13 shall continue employee benefits at the employer's expense.

14 Section 35. Effect on existing employee benefits.

15 (a) Taking leave under this Act shall not result in the
16 loss of any employee benefit accrued before the date on which
17 the leave commenced.

18 (b) Nothing in this Act shall be construed to affect an
19 employer's obligation to comply with any collective bargaining
20 agreement or employee benefit plan that provides greater leave
21 rights to employees than the rights provided under this Act.

22 (c) The leave rights provided under this Act shall not be
23 diminished by any collective bargaining agreement or employee
24 benefit plan.

1 (d) Nothing in this Act shall be construed to affect or
2 diminish the contract rights or seniority status of any other
3 employee of any employer covered under this Act.

4 Section 40. Prohibited acts.

5 (a) An employer shall not interfere with, restrain, or deny
6 the exercise or the attempt to exercise any right provided
7 under this Act.

8 (b) An employer shall not discharge, fine, suspend, expel,
9 discipline, or in any other manner discriminate against any
10 employee that exercises any right provided under this Act.

11 (c) An employer shall not discharge, fine, suspend, expel,
12 discipline, or in any other manner discriminate against any
13 employee for opposing any practice made unlawful by this Act.

14 Section 45. Enforcement.

15 (a) The Director or his or her authorized representative
16 shall administer and enforce the provisions of this Act. Within
17 3 years after an alleged violation occurs, any employee who
18 believes his or her rights under this Act have been violated or
19 his or her representative may file a complaint with the
20 Department requesting a review of the alleged violation. A copy
21 of the complaint shall be sent to the person who allegedly
22 committed the violation, who shall be the respondent. Upon
23 receipt of a complaint, the Director shall cause such
24 investigation to be made as he or she deems appropriate. The

1 investigation shall provide an opportunity for an
2 administrative hearing at the request of any party to the
3 review to enable the parties to present information relating to
4 the alleged allegation.

5 A party may be accompanied at an administrative hearing by
6 his or her attorney or other representative. The participation
7 of the other representative in the informal hearing shall be
8 limited to fact-finding and support functions. Other
9 representatives shall not be permitted to engage in any conduct
10 or function that constitutes or reasonably approximates the
11 practice of law. Other representatives shall not examine or
12 cross-examine any party or witness; offer any documents or
13 other exhibits into evidence; make evidentiary, procedural, or
14 other legal objections; cite, file, or interpret case law,
15 statutes, administrative rulings, or other legal authority;
16 make legal arguments or interpretations; or give legal advice
17 or opinions to parties or witnesses. Other representatives must
18 provide to the represented party for signature a written
19 disclosure document that explicitly states that the
20 representative is not an attorney and that the representative
21 is not permitted to present legal arguments or otherwise engage
22 in any function that reasonably approximates the practice of
23 law as described in this subsection. The document shall be
24 signed by both the representative and the represented party.

25 (b) The parties may bring witnesses to the hearing, and the
26 hearing officer shall hear witnesses with information related

1 to the claim. The hearing officer shall determine the order in
2 which the witnesses are to be heard and shall limit testimony
3 to that which is relevant and material to the claim, not
4 cumulative in nature, and not unduly repetitious. In deciding
5 whether to permit a witness to testify, the hearing officer may
6 consider the relevance and materiality of the testimony. The
7 hearing officer may exclude witnesses from the hearing when
8 they are not giving testimony. The hearing officer shall
9 conduct and control the proceedings.

10 The parties shall be given written notice of the time and
11 place of the hearing at least 7 days before the hearing. Upon
12 receiving the report of the investigation, the Director shall
13 make findings of fact. If the Director finds that a violation
14 did occur, he or she shall issue a decision incorporating his
15 or her findings and requiring the party committing the
16 violation to take such affirmative action to abate the
17 violation as the Director deems appropriate, including:

18 (1) damages equal to the amount of wages, salary,
19 employment benefits, public assistance, or other
20 compensation denied or lost to such individual by reason of
21 the violation and the interest on that amount calculated at
22 the prevailing rate;

23 (2) such equitable relief as may be appropriate,
24 including, but not limited to, hiring, reinstatement,
25 promotion, and reasonable accommodations; and

26 (3) reasonable attorney's fees, reasonable expert

1 witness fees, and other costs of the action to be paid by
2 the respondent to a prevailing employee.

3 If the Director finds that there was no violation, he or
4 she shall issue an order denying the complaint. An order issued
5 by the Director under this Section shall be final and subject
6 to judicial review under the Administrative Review Law.

7 (c) The Director shall adopt rules necessary to administer
8 and enforce this Act in accordance with the Illinois
9 Administrative Procedure Act. The Director shall have the
10 powers and the parties shall have the rights provided in the
11 Illinois Administrative Procedure Act for contested cases,
12 including, but not limited to, provisions for depositions,
13 subpoena power and procedures, and discovery and protective
14 order procedures.

15 (d) The Department may establish an administrative
16 procedure to adjudicate claims and to issue final and binding
17 administrative decisions on such claims subject to the
18 Administrative Review Law. To establish such a procedure, the
19 Director or her or his authorized representative may promulgate
20 rules. The adoption, amendment or rescission of rules for such
21 a procedure shall be in conformity with the requirements of the
22 Illinois Administrative Procedure Act.

23 (e) The Attorney General of Illinois may intervene on
24 behalf of the Department if the Department certifies that the
25 case is of general public importance. Upon such intervention
26 the court may award such relief as is authorized to be granted

1 to an employee who has filed a complaint or whose
2 representative has filed a complaint under this Section.

3 Section 50. Refusal to pay damages. Any employer who has
4 been ordered by the Director of Labor or the court to pay
5 damages under this Section is liable for:

6 (1) damages equal to the amount of wages, salary,
7 employment benefits, public assistance, or other
8 compensation denied or lost to such individual by reason of
9 the violation and the interest on that amount calculated at
10 the prevailing rate;

11 (2) such equitable relief as may be appropriate; and

12 (3) reasonable attorney's fees, reasonable expert
13 witness fees, and other costs of the action to be paid by
14 the respondent to a prevailing employee.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."